

1 EAGAN AVENATTI, LLP
2 Michael J. Avenatti, State Bar No. 206929
3 mavenatti@eaganavenatti.com
4 Carlos Colorado, State Bar No. 231031
5 ccolorado@eaganavenatti.com
520 Newport Center Drive, Suite 1400
Newport Beach, CA 92660
Telephone: 949.706.7000
Facsimile: 949.706.7050

6 Attorneys for Plaintiff, Individually and On
7 Behalf of All Others Similarly Situated

8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11

12 GREG HERRICK, individually and on
13 behalf of all others similarly situated,

14 Plaintiffs,
15

16 vs.
17 NATIONAL FOOTBALL LEAGUE,
NATIONAL FOOTBALL MUSEUM,
INC. dba PRO FOOTBALL HALL OF
FAME,

18 Defendants.

19 CASE NO.: 16-6324

20
21 **NATIONWIDE CLASS ACTION**
22 **COMPLAINT FOR BREACH OF**
23 **CONTRACT**

24 **DEMAND FOR JURY TRIAL**

1 Plaintiff Greg Herrick (“Plaintiff”) brings this suit against the National Football
2 League and the National Football Museum, Inc. dba Pro Football Hall of Fame
3 (collectively, “Defendants”) to recover the damages owed to him and others similarly
4 situated.

5

6 **PARTIES**

7 1. Plaintiff Greg Herrick (“Herrick”) is an individual and a resident and
8 citizen of Los Angeles, California, and a purchaser of tickets to the 2016 Hall of Fame
9 Game scheduled for Sunday, August 7, 2016 between the Green Bay Packers and the
10 Indianapolis Colts (the “2016 Hall of Fame Game” or the “Game”). Herrick is a
11 representative plaintiff for the “Cancelled Game Class” and “Cancelled Game
12 California Subclass” defined below.

13 2. Defendant National Football League (the “NFL”) is an unincorporated
14 association with four members in the State of California (including one within this
15 District) and a principal place of business on Park Avenue in New York City, New
16 York.

17 3. Defendant National Football Museum, Inc. (the “Hall of Fame”) is an Ohio
18 corporation with its principal place of business in Canton, Ohio.

19

20 **JURISDICTION AND VENUE**

21 4. This Court has subject matter jurisdiction over this action pursuant to the
22 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), as the proposed class contains
23 more than 100 members, at least one of whom maintains citizenship in a state diverse
24 from the defendant, and seeks in the aggregate more than \$5,000,000, exclusive of costs
25 and interest.

26 5. Venue is proper pursuant to 28 U.S.C. § 1391(b) & (c) because a
27 substantial part of the events or omissions giving rise to the claim occurred in this

1 judicial district, and because Defendants are subject to the Court's personal jurisdiction
2 in this judicial district.

3

4 FACTUAL ALLEGATIONS

5 **The NFL's History of Stadium Mismanagement.**

6. The NFL unfortunately has a history of mismanaging the stadiums where
7 its games are held. For example, in 2011 the NFL held Super Bowl XLV and placed
8 ticketholders in temporary seats with obstructed views. Other ticketholders were
9 unreasonably delayed, relocated or completely displaced from their seats as a result of
10 the incomplete installation of temporary seats, which were deemed unsafe and unusable
11 by the local fire marshal. All of this occurred as a result of the NFL's mismanagement,
12 misconduct and sheer incompetence. As alleged herein, this conduct has continued
13 despite the Super Bowl XLV debacle.

14. The NFL also unfortunately has a history of scheduling games on unsafe
15 playing surfaces. Indeed, it was only in July 2016 that the NFL established the Field
16 Surface & Performance Committee, a committee intended to provide guidance
17 regarding the safety and performance of NFL surfaces.

18

19 **The Mismanagement of the 2016 Pro Football Hall of Fame Game.**

20. The Pro Football Hall of Fame Game ("Hall of Fame Game") is an annual
21 NFL exhibition game held during the weekend of the Pro Football Hall of Fame's
22 induction ceremonies. It is played at the Tom Benson Hall of Fame Stadium, adjacent
23 to the Hall of Fame building in Canton, Ohio. This game is highly anticipated, as it is
24 the first game of the NFL's preseason. Indeed, the TV ratings for this game routinely
25 rival those of *playoff games* in other sports. In fact, the 2015 game drew an estimated
26 11 million television viewers. Tom Benson Hall of Fame Stadium has a capacity of
27 approximately 22,000 seats and the Hall of Fame Game has historically sold out every
28 year.

1 9. The NFL has previously faced problems with the turf at the stadium, where
2 Steelers kicker Shaun Suisham suffered a career-ending injury at the 2015 Hall of Fame
3 Game. Following that game, the stadium began to be reconstructed. However,
4 unbeknownst to fans travelling to see the 2016 game, reconstruction was not completed
5 in time for the 2016 game.

6
7 10. For the August 7, 2016 game between the Green Bay Packers and
8 Indianapolis Colts, Defendants imported a used FieldTurf playing surface from the
9 Superdome in New Orleans. Further, Defendants caused decking to be constructed over
10 the field for an August 5 Tim McGraw concert and the Hall of Fame induction
11 ceremony on August 6.

12 11. As Defendants knew but as fans would only later find out, as of the day of
13 the game, insufficient seating had been installed for the number of ticket holders who
14 would arrive that day, with entire sections of seats left unfinished. This was in effect a
15 replay of what transpired at Super Bowl XLV.

16 12. Further, the decking that covered the field was not removed until 2:45 p.m.
17 even though it was required to be removed by 8:00 a.m. Hours before the game was to
18 start, the grounds crew, under the direction and supervision of Defendants, applied paint
19 for the midfield logo and endzone lettering onto the field. When the grounds crew
20 determined the paint was not drying quickly enough, they heated the field to try to
21 speed up the process. Instead of rectifying the problem, this resulted in the melting of
22 the rubber pellets that comprise the FieldTurf, creating a slick, sticky, and congealed
23 mess.

24 13. Approximately 2.5 hours before the game, the stadium workers applied a
25 substance to remedy the problems with the field. However, a Green Bay Packers
26 employee noticed the substance's label warned of burns upon skin contact. Then, as
27 later recounted by Indianapolis Colts punter Pat MacAfee, players were "told to get the
28 f*** off the field, like everybody off the field. Everybody get off the field, everybody

1 get off the field. So we go inside and Vinatieri, he's like an NFL PA executive member,
2 so there's a lot of sh*t going on, with the NFL PA saying, Hey listen, if that field tore an
3 ACL last year, ruined a guy's career last year, they tried to fix the field but if that field
4 isn't good, then you guys can't be playing on this sh*t, right? And it wasn't just the NFL
5 PA, it was the medical doctors from both teams. The guy that did my knee surgery was
6 on the field saying no f***ing way ... Everybody was all in with no way this is
7 happening."

8 14. Despite it being clear the game would be cancelled, Defendants continued
9 to maintain a façade of normality for fans and the general public. As McAfee stated,
10 "They let everybody into the stadium before telling them it was going to be cancelled."
11 In fact, the President of the Hall of Fame David Baker entered the Colts' locker room
12 and, according to McAfee, stated "If you ever need anything from us because we did
13 this, let us know." Even though the Colts and Packers, together with the NFL's
14 broadcast partner ESPN, were told the game had been cancelled between 6:00 and 7:00
15 p.m., Defendants purposely told the fans nothing. Instead, the scoreboard continued to
16 tick down to an 8:00 p.m. kickoff that never happened.

17 15. In addition to failing to inform fans that the game would be cancelled,
18 Defendants purposely took affirmative steps to keep the fans in the dark. McAfee
19 reported that "we weren't allowed to tweet after we found out that the game was
20 cancelled, we weren't allowed to make the announcement. It was kind of hush-
21 hush...there was a big no tweeting policy, nobody's allowed to say sh*t."

22 16. On information and belief, by design, Defendants allowed and encouraged
23 fans to continue to purchase food, beverages, and souvenirs at the stadium as they
24 waited for a game that would never start. And Defendants did so in the interest of
25 money.

26 17. It was not until approximately 8:00 p.m. that Hall of Fame President David
27 Baker finally told the fans, many of who had travelled from around the country, that the
28 game was cancelled.

NFL Officials Purport to “Admit Responsibility”

18. On August 9, 2016, under increasing public pressure, Executive Vice President Troy Vincent sent a memo to the NFL teams wherein he admitted the NFL was responsible: "While the HOF field situation underscored the challenges in working with third parties, ultimately I am accountable for ensuring the field is of the highest standard." He also added that the league's football operations department "must demand and expect an extra level of detail in adhering to NFL standards ... for non-club fields."

19. In addition, following the cancellation, Colts owner Jim Irsay was quoted as saying: "This shouldn't happen It's not difficult. Obviously everyone out there says, 'Hey you're a \$12 billion league. How could you not have a field out there ready to go?' Well, the Hall of Fame is sort of separate and gets run a little differently from the league. But ... as owners, we'll have to get it right so it never happens again.

Fans suffer significant damages.

20. As a direct result of the incompetence of Defendants, Plaintiff and similarly situated fans have suffered damages including but not limited to: (1) the out-of-pocket cost of the tickets to attend the game; (2) lodging and travel expenses to attend the game; (3) costs associated with items purchased on the day of the game, including but not limited to items purchased while Defendants purposely concealed the fact that the game had already been cancelled; and (4) missed hours and days of employment for certain fans who took vacation to attend the game.

21. For example, Plaintiff Herrick travelled from California with his wife to the game and paid \$1000 to acquire two tickets. He also incurred travel expenses to attend the game and made purchases before the game was cancelled at 8:00.

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action on his own behalf, and as a class action on behalf of the Classes defined herein, pursuant to, and properly maintainable under Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3). The Classes consists of thousands of

1 ticket holders to the 2016 Hall of Fame Game victimized by Defendants' breach of
2 contract. Specifically, Plaintiff brings this suit on behalf of the following Classes:
3

4 **The "Canceled Game Class":** All persons who paid for
5 and/or acquired tickets to the 2016 NFL Hall of Fame Game.
6 The class excludes counsel representing the class and all
7 persons employed by said counsel and/or who attended the
8 game at the invitation of counsel, governmental entities, the
9 NFL, any entity in which the NFL has a controlling interest, the
10 NFL's officers, directors, affiliates, legal representatives,
11 employees, co-conspirators, successors, subsidiaries, and
12 assigns, any judicial officer presiding over this matter, the
13 members of their immediate families and judicial staff, and any
14 individual whose interests are antagonistic to other class
15 members.

16
17 **The "California Cancelled Game Subclass":** All persons
18 who paid for and/or acquired tickets to the 2016 NFL Hall of
19 Fame Game while residing within the state of California. The
20 class excludes counsel representing the class and all persons
21 employed by said counsel and/or who attended the game at the
22 invitation of counsel, governmental entities, the NFL, any entity
23 in which the NFL has a controlling interest, the NFL's officers,
24 directors, affiliates, legal representatives, employees, co-
25 conspirators, successors, subsidiaries, and assigns, any judicial
26 officer presiding over this matter, the members of their
27 immediate families and judicial staff, and any individual whose
28 interests are antagonistic to other class members.

1 23. The NFL subjected Plaintiff and each of the respective Classes to the same
2 wrongdoing and harmed them in the same manner. Now, Plaintiff and each of the
3 respective Classes seek to enforce the same rights and remedies pursuant to the same
4 legal theory: breach of contract.

5 24. Numerosity: The proposed classes are so numerous that individual joinder
6 of all their members is impracticable. While the exact number and identities of the
7 Class Members are unknown at this time, such information can be ascertained through
8 appropriate investigation and discovery. It is estimated that the “Cancelled Game
9 Class” consists of over 22,000 members. It is estimated that the “Cancelled Game
10 California Subclass” contains far in excess of 100 members. The disposition of the
11 claims of these Class Members in a single class action will provide substantial benefits
12 to all parties and to the Court.

13 25. Typicality: Plaintiff’s claims are typical of the claims of his respective
14 Classes in that his claims arise from the same event or practice or course of conduct that
15 gives rise to the claims of other class members, and is based on the same legal theory as
16 their claims.

17 26. Adequacy of Representation: Plaintiff will fairly and adequately represent
18 and protect the interests of the Classes. Undersigned counsel has substantial experience
19 in prosecuting complex lawsuits and class action litigation. Plaintiff and undersigned
20 counsel are committed to vigorously prosecuting this action on behalf of the Classes,
21 and have the financial resources to do so. Neither Plaintiff nor his counsel have any
22 interests adverse to the Classes.

23 27. Superiority of Class Action and Impracticability of Individual Actions:
24 Plaintiff and the members of the Classes suffered harm as a result of the NFL’s
25 unlawful conduct. A class action is superior to other available methods for the fair and
26 efficient adjudication of the controversy. Individual joinder of all members of the
27 Classes is impractical. Even if individual Class Members had the resources to pursue
28 individual litigation, it would be unduly burdensome to the courts in which the

1 individual litigation would proceed. Individual litigation magnifies the delay and
2 expense to all parties in the court system of resolving the controversies engendered by
3 the NFL's common course of conduct. The class action device allows a single court to
4 provide the benefits of unitary adjudication, judicial economy, and the fair and
5 equitable handling of all Class Members' claims in a single forum. The conduct of this
6 action as a class action conserves the resources of the parties and of the judicial system,
7 and protects the rights of the Class Members. Adjudication of individual Class
8 Members' claims with respect to Defendants would, as a practical matter, be dispositive
9 of the interests of other members not parties to the adjudication, and could substantially
10 impair or impede the ability of other Class Members to protect their interests.

11 28. Common Questions of Law and Fact Predominate: In addition, the
12 requirements of Federal Rule of Civil Procedure 23 are satisfied by questions of law
13 and fact common to the claims of Plaintiff and of each member of the Classes and
14 which predominate over any question of law or fact affecting only individual members
15 of the Classes. Common questions of law and fact include, but are not limited to, the
16 following:

17 a. The questions of law and fact common to the Cancelled Game Class
18 include the following: (i) were members of the Cancelled Game Class entitled to
19 watch the 2016 Hall of Fame Game?; (ii) was the cancellation of the game a
20 breach of contract under the ticket contract?; and (iii) are members of the
21 Cancelled Game Class entitled to damages for breach of contract?

22
23 b. The questions of law and fact common to the Cancelled Game
24 California Subclass include the following: (i) were members of the Cancelled
25 Game California Subclass entitled to watch the 2016 Hall of Fame Game?; (ii)
26 was the cancellation of the game a breach of contract under the ticket contract?;
27 and (iii) are members of the Cancelled Game California Subclass entitled to
28 damages for breach of contract?

29. Notice: Notice can be provided via internet publication, published notice and/or through mail and paid for by the NFL.

FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT

30. The allegations of paragraphs 1 through 29 are re-alleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the classes of similarly situated ticket holders.

31. Tickets to the Hall of Fame Game were originally sold to the fans, putative members of the classes and Plaintiff by Defendants.

32. Accordingly, Plaintiffs entered into an agreement with Defendants whereby Plaintiffs were sold tickets for seats to the Hall of Fame Game on August 7, 2016. These tickets comprise valid and enforceable contracts entitling all Plaintiffs to watch the game.

33. Plaintiffs fully and properly performed all conditions, covenants, and acts required to be performed on their part in accordance with the terms and conditions of the ticket purchases.

34. Defendants breached their obligations under the agreement to the “Cancelled Game Class” by cancelling the game due to factors under their control.

35. As a direct and proximate result of the NFL's breaches, Plaintiffs have sustained damages including, but not limited to: (1) the out-of-pocket cost of the tickets to attend the game; (2) lodging and travel expenses to attend the game; (3) costs associated with items purchased on the day of the game, including but not limited to items purchased while Defendants purposely concealed the fact that the game had already been cancelled; and (4) missed hours and days of employment for certain fans who took vacation to attend the game.

1 36. Defendants acted in bad faith and acted vexatiously, wantonly, obdurately,
2 and oppressively in connection with the game. Because of the NFL's history of
3 incompetent stadium management, Defendants knew or should have known that they
4 needed to closely supervise stadium setup to ensure the stadium was ready in time. In
5 addition, Defendants knowingly and intentionally failed to timely inform class
6 members that the game would be cancelled even though they had already informed the
7 Colts and Packers (and presumably TV executives) about the cancellation hours earlier.

8 37. On information and belief, by failing to inform class members of the
9 game's cancelation, Defendants purposely ensured they received significant profits
10 from the sale of concessions and souvenirs purchased by class members as they waited
11 in anticipation for the kickoff of a game that would never occur. Defendants were in
12 fact on notice that the stadium was ill-prepared to host the game shortly after 8:00 a.m.,
13 if not earlier, when the decking covering the field should have been removed. The
14 delay in removing the decking resulted in a delay in painting the field and ultimately
15 resulted in cancellation of the game. Had Defendants notified class members about the
16 game's cancellation well before the scheduled kickoff, class members could have
17 mitigated their damages. Instead, Defendants chose to proceed under the façade of
18 normality, allow fans into the stadium, and reap profits on the sale of concessions and
19 souvenirs from their captive audience.

20 38. All conditions proceeding to Plaintiffs' claims for relief have been
21 performed or have occurred.

22 39. Plaintiffs seek to recover actual damages outlined below from the
23 Defendants as a direct and proximate result of the unlawful conduct of the NFL.

24 40. Plaintiffs will show that Defendants acted in bad faith, vexatiously,
25 wantonly, obdurately, and/or oppressively and will therefore seek to recover attorneys'
26 fees.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

41. Plaintiffs seek to recover the following damages and obtain the following relief from Defendants:

- (a) Economic loss and damages suffered by Plaintiffs;
- (b) All reasonable and necessary attorneys' fees;
- (c) Court costs;
- (d) Pre and post-judgment interest
- (e) And such other relief to which Plaintiffs may show themselves justly entitled.

Dated: August 23, 2016

EAGAN AVENATTI, LLP

By: /s/ Michael J. Avenatti
Michael J. Avenatti
Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: August 23, 2016

EAGAN AVENATTI, LLP

By: /s/ Michael J. Avenatti
Michael J. Avenatti
Attorneys for Plaintiffs